

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

KENNY DU,  
  
Plaintiff,  
  
v.  
  
COSTCO WHOLESALE CORPORATION,  
ET AL.,  
  
Defendant.

No. 2:22-cv-00910-JAM-DB

**ORDER DENYING PLAINTIFF'S MOTION  
TO CONSOLIDATE AND REMAND**

Before the Court is Kenny Du's ("Plaintiff" or "Du") motion to consolidate two Sacramento County Superior Court civil cases ("state court actions") with the present Eastern District of California civil case ("federal action") and remand the consolidated case to state court. Mot. to Consolidate and Remand ("Mot."), ECF No. 14. For the reasons set forth below, the Court DENIES Plaintiff's Motion to Consolidate and DENIES Plaintiff's Motion to Remand.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

On March 14, 2022, Plaintiff filed a complaint in Sacramento County Superior Court against Costco Wholesale Corporation ("Costco Corp.") and Costco Warehouse No. 464 ("Costco Warehouse") (collectively, "Defendants"). Complaint ("Compl."), Exh. A to Notice of Removal, ECF No. 1. Plaintiff alleges he slipped and fell from a liquid substance on the concrete at

1 Defendants' gas station. Id. Plaintiff alleges Defendants  
2 negligently maintained the area where the incident occurred. Id.

3 On May 26, 2022, Defendant Costco Corp. filed a notice of  
4 removal, invoking the Court's diversity jurisdiction under  
5 28 U.S.C. §§ 1332(a). Notice of Removal, ECF No. 1. Defendant  
6 Costco Corp.'s grounds for removal included: (1) Plaintiff is a  
7 California citizen; (2) Defendant Costco Corp. is a Washington  
8 citizen; (3) Defendant Costco Warehouse is not a separate legal  
9 entity, but rather a part of Defendant Costco Corp; and  
10 (4) Plaintiff is asserting damages in the amount of  
11 \$5,120,000.00, which is greater than the \$75,000 requirement for  
12 diversity jurisdiction. Id.; State Court Statement of Damages,  
13 Exh. B to Notice of Removal, ECF No. 1.

14 On June 27, 2022, thirty-two (32) days after Defendant filed  
15 its notice of removal, Plaintiff filed a motion to amend his  
16 complaint and remand the federal action back to state court.  
17 Mot. to Amend and Remand, ECF No. 3. The Court dismissed the  
18 motion on the grounds that Plaintiff failed to comply with the  
19 Court's meet and confer requirements. Minute Order, ECF No. 11.  
20 On October 13, 2022, the parties filed a joint status report  
21 indicating that Plaintiff would be joining a "Jorge Martinez" as  
22 a co-defendant to the present case. Joint Status Report, ECF  
23 No. 12. The status report anticipated that Plaintiff would file  
24 a motion to remand after joining Mr. Martinez, as Mr. Martinez is  
25 a California citizen and joining him would destroy the Court's  
26 subject matter jurisdiction. Id. Plaintiff, however, has not  
27 made any attempts to join Mr. Martinez. Instead, Plaintiff filed  
28 a separate action against Mr. Martinez in Sacramento County

1 Superior Court. Mot. at 2; Du v. Martinez Compl., Exh. 7 to  
2 Mot., ECF No. 14-9. Plaintiff now seeks to consolidate this  
3 state court action against Mr. Martinez with the current federal  
4 action. Mot. at 2.

5 Plaintiff also seeks to consolidate a second Sacramento  
6 County Superior Court case with the two actions. Id. This  
7 second state court action arises out of an unrelated motor  
8 vehicle collision that occurred approximately fourteen (14)  
9 months after the Costco slip and fall incident. Id.; Du v. Aubin  
10 Compl., Exh. 5 to Mot., ECF No. 14-7. Plaintiff alleges the  
11 motor vehicle collision exacerbated Plaintiff's injuries from the  
12 Costco slip and fall incident. Mot. at 2.

13 Plaintiff requests, pursuant to Federal Rules of Civil  
14 Procedure Rule 42(a), the Court consolidate all three actions and  
15 remand them to state court. Mot. at 1. Plaintiff states "[e]ach  
16 of these three cases contain common questions of law and fact.  
17 Each of these three cases contain the same Plaintiff and each has  
18 claims for injuries to the same part of the body." Mot.'s Mem.  
19 P. & A., ECF No. 14-1 at 4:3-4. Defendant Costco Corp. filed an  
20 opposition. Opp'n, ECF No. 15. Plaintiff filed a Reply. Reply,  
21 ECF No. 16.

## 22 **II. OPINION**

### 23 **A. Motion to Consolidate**

24 Federal Rules of Civil Procedure Rule 42(a) allows for  
25 consolidation of actions before the court involving common  
26 questions of law or fact. Fed. R. Civ. Proc. 42(a). Under the  
27 plain language of Rule 42(a), a district court can only  
28 consolidate cases that are already before the court, that is,

1 pending in the same district. Id.; See also Inv'rs Research Co.  
2 v. United States Dist. Court for Cent. Dist., 877 F.2d 777 (9th  
3 Cir. 1989). Therefore, Rule 42(a) does not provide a means for  
4 the Court here to consolidate Plaintiff's actions pending in  
5 both federal and state court. See also Xiangyuan Zhu v.  
6 Countrywide Realty, 160 F. Supp. 2d 1210, 1227 (D. Kan. 2001).

7 Plaintiff's two state court actions are not before this  
8 Court and Plaintiff has not provided any legal authority that  
9 would allow the Court to transfer the state court actions to  
10 this federal district. The Court has no mechanism to  
11 consolidate the actions. Plaintiff's request to consolidate is  
12 DENIED.

13 B. Motion to Remand

14 Plaintiff makes a second request to remand the consolidated  
15 cause of action to state court. Mot. at 2:25-26. Plaintiff  
16 argues, once consolidated, subject matter jurisdiction is  
17 destroyed. Id.

18 Having denied Plaintiff's Motion to Consolidate, there is  
19 no legal basis for this Court to remand the federal action to  
20 state court. Plaintiff's request to remand is DENIED.

21 **III. ORDER**

22 For the reasons set forth above, Plaintiff's Motion to  
23 Consolidate and Plaintiff's Motion to Remand are DENIED.

24 IT IS SO ORDERED.

25 Dated: November 3, 2023

26  
27   
28 JOHN A. MENDEZ  
SENIOR UNITED STATES DISTRICT JUDGE